IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/03/2004

CORAM

THE HON'BLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.693 of 1997
and CRL APPEAL NO. 717 of 1997

Criminal Appeal No.693 of 1997:

1. Radhakrishnan @ Thamba ... Appellants /
2. Shekar @ Kozhi Shekar Accused 2 & 4

-Vs-

State by
Inspector of Police,
Karur Police Station,
Karur. ... Respondent.

Criminal Appeal No.717 of 1997:

Kumar @ Arivazhagan ... Appellant /
Accused No.3.

Vs.

State by
Inspector of Police,
Karur Police Station,
Karur. ... Respondent.

Criminal Appeals against the judgment dated 09.09.1997 made in
S.C.No.235 of 1996 on the file of II Additional Sessions Judge, Trichy.

!For appellants : Mr.M.Ajmalkhan (C.A.693/1997)

Mr. S.Ashok Kumar,
for M/s.C.D.Johhson and A. Amarnath
(C.A.No.717/1997)

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side) (in both appeals)

:COMMON JUDGEMENT

Criminal Appeal No.693 of 1997: Accused 2 and 4 in S.C.No.235 of 1 996 on the file of II Additional Sessions Judge, Trichy are the Appellants in this appeal.

2. Criminal Appeal No.717 of 1997: The 3rd Accused in S.C.No.235 of 1996 on the file of II Additional Sessions Judge, Trichy is the Appellant in this appeal.

3. By the Judgment dated 09.09.1997 in S.C.No.235 of 1996, Appellants / Accused 2 to 4 were convicted for causing the death of one Manivel. Aggrieved over the conviction, Accused 2 to 4 have preferred these appeals.

4. The gist of the charges, finding of the Trial Court and the sentence of imprisonment imposed upon them are as under:-

Charge Number
(1)
Gist of the Offence
(2)
Against which accused
(3)
Finding

(4)
Sentence

(5)
1
Under Sec.302 IPC for causing the death of Manivel, by causing stab injuries on left neck, left elbow.
A3
Not guilty under Sec.302 IPC.

Found guilty under Sec. 304(II) IPC
Sentenced to undergo Rigorous Imprisonment for six years.

2
Under Sec.302 IPC r/w 34 I.P.C. for having the common intention in causing the murder of Manivel.
A.1,
A.2
and
A.4
A.1 acquitted.

A.2 and A.4 found not guilty under Sec.302 IPC r/w 34 IPC.

A.2 and A.4 Found guilty under Sec.304(II) IPC r/w 34 IPC.
Sentenced to undergo Rigorous Imprisonment for six years each.

5. Case of prosecution could briefly be stated thus:- P.W.1 - Selvan is the resident of V.O.C. Nagar, Karur and brother of deceased Manivel. The Accused are residents of Karur. P.W.1 knows the Accused. On 16.07.1995 - 6.45 p.m., P.W.1 - Selvan, P.W.2 - Mayakrishnan, P.W.3 - Balu and deceased Manivel were standing near Amudha Hotel in Jawahar Bazaar Street, Karur. A.1 to A.4 were standing on the Northern side of the Bazaar Street near the Slipper Shop of P.W.4 - Raja.

6. Occurrence. P.W.2 - Mayakrishnan went to the Slipper Shop of P.W.4 - Raja and questioned him about the substandard slipper that P.W.4 sold to him. A.1 retorted saying that how the persons of V.O.C. Nagar are so emboldened to question about the same and abused P.W.2 in vulgar language, which resulted in wordy altercation between P.W.2 and A.1. A.1 tried to hit P.W.2 - Mayakrishnan. At that time, deceased Manivel intervened and questioned A.1. Such questioning of Manivel resulted in wordy altercation between A.1 and deceased Manivel. At that time, A.2 and A.4 held the deceased Manivel from the back by his hands. A.1 - Jinna fisted Manivel from the Back. A.3 stabbed the deceased on his left neck. When Manivel tried to wriggle out, A.3 further inflicted cut injury on his left wrist. The deceased had fallen down saying " Inah vd;id fhg;ghw;W';f ". On seeing the same, P.Ws.1 and 3 went near to rescue Manivel. On seeing them, A.3 - Kumar and others had run away from the scene.

7. P.W.1 - Selvan and P.W.2 - Mayakrishnan took the injured Manivel to Karur Government Hospital at 7.00 p.m. P.W.7 - Dr. Chandrasekaran examined Manivel and found him dead. Declaring him dead, P.W.7 sent Ex.P.6 - Death Intimation.

8. Registration of the Case. P.W.1 - Selvan went to Karur Town Police Station at 7.45 p.m. and lodged Ex.P.1 - Written Complaint. On the basis of Ex.P.1 - Complaint, a case was registered in Crime No.160 2 of 1995 under Ss.341, 323 and 302 I.P.C. under Ex.P.12 - First Information Report. Ex.P.12 - First Information Report was handed over to P.W.9 (Chinnasamy) - Grade I Police Constable for handing over the same in the Court. P.W.9 handed over Ex.P.12 - First Information Report in the Court at 9.30 p.m. on 16.07.1995.

9. Investigation. P.W.13 - Inspector of Police received copy of the First Information Report (Ex.P.12) and taken up the investigation. Scene of occurrence was inspected in the presence of witnesses. Ex.P.2 - Observation Mahazar and Ex.P.15 - Rough Plan were prepared on the scene of occurrence - Jawahar Bazaar Street, Karur. Blood stained mud - M.O.1 and sample mud - M.O.2 were seized under Ex.P.3 - Seizure Mahazar.

10. Inquest. On 17.07.1995 - from 7.00 a.m. to 10.00 a.m., P.Ws.1 to 4 were examined in the presence of Panchayatdars. Inquest was held on the body of deceased Manivel. Ex.P.16 is the Inquest Report. After the inquest, body was sent to Autopsy with Ex.P.13 - Requisition.

11. Post-mortem. On receipt of Ex.P.13 - Requisition, P.W.12 - Dr. Kousalya had conducted Autopsy on the body of the deceased Manivel noting stab injuries on the left side neck and left elbow and the corresponding internal injuries. P.W.12 had issued Ex.P.14 - Postmortem Certificate opining that the deceased died of shock and haemorrhage due to stab injuries over the left side of the neck with the corresponding internal injuries.

12. During the investigation, P.W.3 - Balu had produced his blood stained shirt. Likewise, P.W.2 - Mayakrishnan had also produced his blood stained shirt. They were seized under Ex.P.18 - Seizure Mahazar.

13. Arrest of the Accused. On 17.07.1995 - 12.30 noon, A.1 and A.2 were arrested near Pasupathypalayam Roundana. They were sent to judicial custody on the same day. A.3 and A.4 surrendered before the Court on 20.07.1995. By making necessary application before the Court, P.W.13 - I.O. had taken A.3 and A.4 to police custody on 25.07.1995 . On the basis of the Confession Statement of A.3 (Admissible Portion - Ex.P.4), M.O.3 - Button knife was seized under Ex.P.5 - Seizure Mahazar. Thereafter, A.3 and A.4 were sent back to judicial custody.

14. Seized material objects were sent for chemical analysis. Upon completion of the investigation, the Accused were charge sheeted for the offence under Sec.302 I.P.C.; Sec.302 r/w 34 I.P.C.

15. To substantiate the charges against the Accused, in the Trial Court, prosecution has examined P.Ws.1 to 13. Exs.P.1 to P.18 were marked. M.Os.1 to 4 were produced. The Accused were questioned about the incriminating evidence and circumstances under Sec.313 Crl.P.C. The Accused denied all of them and contended that a false case is foisted against them. Eye witnesses - P.W.2 - Mayakrishnan and P.W.4 - Raja turned hostile.

16. Upon consideration of the solitary testimony of P.W.1 - Selvan and other evidence on record, learned Sessions Judge accepted the evidence of P.W.1 as reliable. The defence version denying the presence of P.W.1 and that he would not have witnessed the occurrence and that P.W.1 is procured to depose falsehood implicating the Accused, was rejected by the Trial Court. In para Nos.31, 34 and 35 of its Judgment, the Trial Court elaborately dealt with the facts and circumstances and found that A.1, A.2 and A.4 had no common intention of causing the murder of Manivel. Though after elaborate discussion the learned Sessions Judge found that no common intention could be attributed to A.1, A.2 and A.4, the Trial Court convicted A.2 and A.4 under Sec.30 4 (II) r/w 34 I.P.C.; A.3 under Sec.304 (II) I.P.C. and sentenced them to undergo imprisonment as aforesaid in para No.4.

17. Criminal Appeal No.717 of 1997. Seriously assailing the presence of P.W.1 - Selvan in the scene of occurrence, the learned Senior

Counsel Mr.S.Ashok Kumar for Appllant / 3rd Accused contended that every indications are that P.W.1 - Selvan is procured later to foist a case against the Accused. Taking me through the evidence of P.W.1 and Ex.P.1 - Written Complaint and other evidence, the learned Senior Counsel assailed the evidence of P.W.1 on the ground of improvements in his evidence. The approach of the Trial Court in accepting the evidence of P.W.1 is attacked on the ground that he is highly interested witness. Laying much emphasis upon Ex.P.16 - Inquest Report, it is contended that name of P.W.1 - Selvan is nowhere mentioned in the Inquest Report and in that circumstance, no sanctity could be attached to the solitary version of P.W.1, who is closely related to the deceased Manivel.

18. Criminal Appeal No.683 of 1997. Taking me through the Judgment of the Trial Court, the learned counsel for A.2 and A.4 submitted that though the Trial Court found that that A.2 and A.4 had no common intention, the Trial Court erred in convicting them for the offence under Sec.304 (II) r/w 34 I.P.C. Placing reliance upon number of decisions, it is contended that the occurrence being unpremeditated, no knowledge or intention could be attributed to A.2 and A.4 that A.3 would cause stab injuries to the deceased Manivel.

19. Stressing upon the signature of P.W.1 - Selvan in Ex.P.12 - Printed First Information Report, the learned Government Advocate countered the arguments of the Accused submitting that though P.W.1 is the brother of deceased Manivel, his evidence passes the test of reliability even when subjected to close scrutiny. On the overt act of A.2 and A.4, the learned Government Advocate submitted that by getting hold of the deceased Manivel, prosecution has well proved that A.2 and A.4 shared the common intention and the trial Court has rightly convicted A.3 under Sec.304(II) I.P.C. and A.2 and A.4 under Sec.304 (II) r/w 34 I.P.C. and the conviction does not warrant any interference.

20. Upon careful reassessment of the evidence and materials on record, Judgment of the Trial Court and submissions of both sides, the following points arise for consideration in both the appeals:-

(i) Whether by the evidence of P.W.1, the prosecution has proved that A.3 is responsible for the death of Manivel ?

(ii) Whether the trial Court was right in finding that A.2 and A.4 also shared the common intention with A.3 in causing the death of Manivel ?

(iii) Whether the conviction of A.3 under Sec.304(II) I.P.C. and A.2 and A.4 under Sec.304 (II) r/w 34 I.P.C. is sustainable ?

21. The occurrence was in a main place of commercial activities - Jawahar Bazaar Street. The area is surrounded by shops and other establishments. From the narration of events as per the prosecution case, it is clear that the occurrence was not due to any ill-will or motive. Both Accused and prosecution witnesses, deceased being a group of youngsters, quarrelled with each other on a trivial issue. When there was wordy altercation between P.W.2 - Mayakrishnan and A.1, deceased Manivel intervened.

Enraged over the intervention of Manivel, the Accused are alleged to have caused injuries in the heat of anger.

22. The occurrence is said to have started when P.W.2 - Mayakrishnan asked P.W.4 - Raja about the substandard slipper sold to him, which resulted in wordy altercation between A.1 and P.W.2. Deceased Manivel went in support of P.W.2. At that time, A.3 is alleged to have stabbed the deceased. P.Ws.2 to 4 are the key witnesses for the occurrence. P.W.4 - Raja

is selling slippers in the Platform on the Northern side of Jawahar Bazaar. P.W.2 - Mayakrishnan, resident of Karur Veerappa Street - an auto driver by profession. P.W.3 - Balu, the resident of Karur Venkamedu - a car driver.

23. Case of prosecution is that P.W.1 - Selvan along with P.Ws.2 and 3 were standing near Amudha Hotel on the Southern side of Jawahar Bazaar Road, which is an East-West Road. P.W.4 was selling slippers on the Northern side of the said Road. According to prosecution, prior to altercation, P.Ws.1 to 3 were standing near Amudha Hotel. While so standing, P.Ws.2 and 3 are said to have witnessed the occurrence. P.Ws.2 to 4 have not supported the prosecution case and turned hostile. Because of the hostility of P.Ws.2 to 4, entire prosecution case rests upon the solitary evidence of P.W.1.

24. P.W.1 - Selvan is the brother of deceased Manivel and he is doing painting contract work. His presence in the scene of occurrence and having witnessed the occurrence are seriously assailed by the Accused. Denying the presence of P.W.1 in the scene of occurrence and attacking his reliability, learned Senior Counsel for Appellant / A.3 has urged the following points:-

(i) P.W.1, brother of the deceased is a closely related and interested person and that his evidence suffers from serious infirmities;

(ii) P.W.1 had not taken injured Manivel to the hospital. If really P.W.1 had witnessed the occurrence, he would have definitely accompanied the deceased to the hospital and P.W.7 - Dr. Chandrasekaran would have made mention about the presence of P.W.1 in Ex.P.6 - Death Intimation. Non mention of the name of P.W.1 in Ex.P.6 throws doubt on his presence;
(iii)Non-mention of the name of P.W.1 in Ex.P.16 - Inquest Report either in Column (3) or Column (15) makes it clear that P.W.1 would not have been present at all at the time of occurrence and even during the inquest.

On the above grounds, presence of P.W.1 - Selvan in the scene of occurrence is attacked and his reliability is seriously assailed contending that he is procured to set up the case against the Accused.

25. Before adverting to the evidence of P.W.1 - Selvan about the occurrence, we may firstly consider the points urged by the Accused. As stated earlier, in his evidence, P.W.1 has clearly stated that he was standing along with P.Ws.2 and 3 near Amudha Hotel. P.W.1 has also stated that despite his intervention, A.3 has caused stab injuries. In his evidence P.W.1 has

stated that he and P.Ws.2 and 3 had taken the injured Manivel to Karur Government Hospital and admitted him. Of course, his name is not mentioned in Ex.P.6 - Death Intimation. From Ex.P.6, it is seen that Manivel was admitted to the hospital at 7 .20 p.m. on 16.07.1995. In Ex.P.6 - Death Intimation, the person who brought Manivel to the hospital, is stated as .....

" bfhz;L te;jth; /; v!;/ ghY. ez;gh;. j/bg/ Mh;/ Rg;igah/
br';Fj;j efh;. bt';fnkL. 4tJ thh;L.
fU:h;/"

Though the name of P.W.1 is not mentioned in Ex.P.6 - Death Intimation, P.W.1 definitely claims to have taken Manivel to the hospital. P.W.1 was faced with the sad experience of facing the death of his younger brother. He might have been busy otherwise in sending the message to others. He might not have been present during the process of writing Ex.P.6 - Death Intimation. It is relevant to note that P.W.1 had gone to Karur Town Police Station at 7.45 p.m. and lodged the written complaint - Ex.P.1. Non-mention of his name in Ex.P.6 - Death Intimation does not in any way undermine the version of P.W.1 or his presence in the scene of occurrence.

26. In Ex.P.16 - Inquest Report,

in Column (3) - Kjd; Kjyhf ,we;jJ gw;wp vg;bghGJ.
v';nf. ahuhy; fz;Lgpof;fg;gl;lJ
- and -
in Column (15)- kuzk; Vw;gl;l tpjk; Fwpj;Jk;. fhuzk;
Fwpj;Jk; rhd;W eLth; FGtpd; fUj;J.

name of P.W.1 - Selvan is not mentioned. Much emphasis is laid upon Ex.P.16 - Inquest Report in assailing the presence of P.W.1 and his reliability. The learned Senior Counsel has relied upon the case of Balaka Singh v. State of Punjab (1975 Supreme Court Cases (Cri) 601) in support of his contention that omission of name of P.W.1 in Ex.P.16 - Inquest Report materially affects the prosecution case. It is the further contention that such non-mention of the name of P.W.1 in Inquest Report throws serious doubts on his credibility. This contention does not merit acceptance. The purpose of preparing an Inquest Report under Sec.174(1) Crl.P.C. is to investigate into and draw up a report describing such wounds as may be found on the body of the deceased and stating in what manner or by what weapon such wounds would appear to have been inflicted. For the purpose of holding the inquest neither necessary nor obligatory on the part of the I.O. to mention the names of all the eye witnesses, or the name of the Complainant who has set the criminal law in motion. Any such omission in the Inquest Report cannot go against the prosecution case or on the reliability of P.W.1. Hence, presence of P.W.1 cannot be doubted merely on the non-mention of his name in the Inquest Report. Such omission in the Inquest Report cannot go to the advantage of the Accused.

27. The case of prosecution rests upon the solitary version of P.W.1 - brother of the deceased. It is not the rule of law that the

evidence of a solitary witness, who is closely related should be viewed with suspicion. All that is required is that evidence is to be scrutinised carefully and to see whether the evidence passes the test of reliability and consistent with other evidence.

28. P.W.1 - Selvan has narrated about the wordy altercation between P.W.2 - Mayakrishnan and A.1. A.1 tried to hit P.W.2. At that time, deceased Manivel intervened questioning the conduct of A.1. Such intervention resulted in wordy altercation between A.1 and deceased Manivel. At that time, A.2 and A.4 are alleged to have held the deceased from the back by his hands. A.1 - Jinna fisted on the back of deceased with his hand; A.3 - Kumar stabbed Manivel on his left neck. When Manivel tried to wriggle out, A.3 also inflicted cut injury on the left wrist. P.W.1 has narrated about the occurrence and spoken about the overt act of A.3, A.2 and A.4. His evidence on the overt act of the Accused is to be tested for its reliability and credibility.

29. P.W.1 - Selvan was standing on the opposite side of the place of occurrence. The occurrence started on the Northern side. Before ever P.W.1 could intervene, A.3 inflicted stab injuries. The fact that P.W.1 had not sustained any injuries in the occurrence does not throw doubt on his presence. P.Ws.2 to 4 have exhibited marked unwillingness to support the prosecution case. In the group clashes and animosity between the two parties, it is futile to expect them to support the prosecution case. Likewise, the scene of occurrence being a busy place of commercial activities. The general indifference of the public to come forward to cooperate with the Investigating Agency is a matter of common experience. While so, it would be unreasonable to expect witnesses from independent source. In that situation, the learned Sessions Judge was right in acting on the solitary version of P. W.1.

30. The reliability of P.W.1 is very much assailed on the ground that his evidence suffers from improvements and that his evidence is not consistent with the medical evidence. In Ex.P.1 - Complaint, P.W.1 - Selvan has attributed only one stab injury to A.3. In his evidence, P.W.1 has stated that A.3 has inflicted two stab injuries on the left neck and on the left elbow of deceased Manivel. Whereas as per Ex.P.14 - Post-mortem, three stab injuries - one on the left side neck and two other stab injuries on the left elbow were noted on the body of Manivel. On that ground, evidence of P.W.1 cannot be said to be suffering from improvements. At the time of alleging Ex.P.1 - Complaint immediately after the death of Manivel, P.W.1 was in a shocked mental condition. In his Written Complaint - Ex.P.1, P.W.1 might not have stated about all the injuries. Later, in his evidence before Court, he has attributed two blows to A.3 - one on the left side neck and another on the left elbow of Manivel. The stab injuries being placed on the left elbow itself, there is no material variation and the evidence of P.W.1 is substantially consistent with the medical evidence and the evidence of P.W.1 does not suffer from any improvements.

31. Solitary evidence of P.W.1 is well strengthened by the objective findings during investigation. When the scene of occurrence was inspected and Ex.P.2 - Observation Mahazar was prepared, blood was found to be

splattered (rk;gt ,lj;jpy; ,uj;jk; goe;Js;sJ). The detection of Human blood in M.O.1 - blood stained mud, seized from the scene of occurrence confirms the evidence of P.W.1 as to the scene of occurrence. A.3 and A.4 surrendered before the Court on 20.07.1995. Police custody of A.3 was taken. His confession statement led to the recovery of M.O.3 - Button Knife. Recovery of M.O.3 - Button Knife at the instance of A.3 is yet another incriminating circumstance against A.3.

32. Reliability of P.W.1 - Selvan is further strengthened by the fact that he has lodged the Complaint - Ex.P.1 at 7.45 a.m. on the same day without any unreasonable delay. Ex.P.1 is the Written Complaint. In Ex.P.1, in the earlier part of the first page, the writings are sparse and the later part of writings are slightly congested. Drawing the attention of the Court to Ex.P.1 - Written Complaint, the learned Senior Counsel appearing for A.3 contended that the manner of writing in Ex.P.1 throws doubts that it was written to adjust the writings in a single paper. Ex.P.1 is also assailed on the ground that it is suggestive of deliberation and consultation. This contention lacks in substance. It is the contention of the Accused that P.W.1 - Selvan is the procured witness. If really he was so procured to lodge the complaint, everything would have not been done in an orderly manner. The simplistic manner of writing Ex.P.1 - Written Complaint clearly establishes the presence of P.W.1 in the scene of occurrence and his lodging Ex.P.1 - Complaint. The arguments advanced assailing Ex.P.1 cannot be countenanced.

33. Evidence of P.W.1 - Selvan when tested for its consistency and when read as a whole, this Court finds his evidence has a ring of truth. The learned Sessions Judge has had the opportunity of seeing and observing the demeanor of P.W.1. Upon such observation, the Trial Court found the evidence of P.W.1 has a ring of truth, inspiring the confidence of the Court. No convincing ground is made out for taking a different view. The learned Sessions Judge was right in accepting the evidence of P.W.1 as reliable. The contention of the Accused that P.W.1 is suborned to support the prosecution case has no merits.

34. By the evidence of P.W.1, prosecution has proved that A.3 has inflicted stab injuries on the left side neck and on the left elbow of deceased Manivel. A.2 and A.4 are alleged to have held the deceased by his hands from behind and are alleged to have shared the common intention in causing the death of Manivel and have been convicted for the offence under Sec.304 (II) r/w 34 I.P.C.

35. From the evidence of P.W.1 - Selvan, prosecution has clearly established that A.3 has inflicted stab injuries on the left side neck and the left elbow of Manivel. Injury on the left side neck was the fatal injury. A.2 and A.4 are alleged to have held the deceased by his hands from behind and have shared the common intention. For sharing the common intention in causing the death of Manivel, A.2 and A.4 are convicted under Sec.304 (II) r/w 34 I.P.C. The occurrence was in a sudden quarrel between the Accused and deceased. Prior to inflicting of stab injuries, there was exchange of words between them. A.3 inflicted three stab injuries - one on the left side neck, other two stab injuries on the left elbow joint on Manivel.

36. In paras (31) and (35) of its Judgment, the Trial Court after elaborately considering the aspect, was of the view that prosecution evidence is found to be wanting that A.2 and A.4 have shared the common intention. However, accepting the evidence of P.W.1 that A.2 and A.4 held the deceased from the behind by his hands, the Trial Court found them guilty for sharing the common intention.

37. Let us consider whether A.2 and A.4 could have held the deceased Manivel from behind as alleged by the prosecution. Two stab injuries were found on the left elbow joint pierced and extends up to medial side of the elbow joint. The stab injuries on the left elbow joint are defensive injuries. Presence of stab injuries on the left elbow does suggest that the deceased acted in self preservation. The evidence of P.W.1 that A.2 and A.4 held the deceased does not fit in with the pattern of the injuries. The pattern of the injuries discredits the prosecution case on the overt act of A.2 and A.4.

38. Common intention is to be inferred from the facts and circumstances of each case. On the inference of common intention, in the decision in Jai Bhagwan v. State of Haryana (AIR 1999 SUPREME COURT 1083), it has been held thus:-

"To apply S.34 I.P.C. apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, S.34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, S.34 cannot be invoked. In every case it is not possible to have direct evidence of common intention. It has to be inferred from the facts and circumstances of each case."

39. In the light of the above, let us consider whether A.2 and A.4 are proved to have had any common intention in causing the death of Manivel. A.3 had taken out M.O.3 - Button Knife from his pocket. A.2 and A.4 might not have been aware that A.3 was armed with weapon. In a sudden quarrel, A.3 had picked out M.O.3 - Button Knife and inflicted stab injuries on deceased Manivel. A.2 and A.4 had no prior knowledge either about the intention of A.3 of his act of causing stab injuries. Under those circumstances, A.2 and A.4 cannot be said to have shared the common intention. In fact, the Trial Court was also of the view that there was no conjoint act. However, the Trial Court proceeded to convict A.2 and A.4 on the oral evidence of P.W.1. In that view of the matter, conviction of A.2 and A.4 under Sec.304(II) r/w 34 I.P.C. cannot be sustained.

40. Upon careful reassessment of the evidence, this Court is of the view that the reasonings of the Trial Court finding A.3 guilty is well based upon the materials on record. For the conviction under Sec.304 (II) I.P.C., A.3 was sentenced to undergo Rigorous Imprisonment for six years. In the unpremeditated quarrel, A.3 had no justifiable reason to pick out the knife and inflict the stab injuries. He has caused fatal injury - stab injury

one the left side of the neck. Considering the nature of weapon (M.O.3 - Button Knife) and the injuries caused to the deceased Manivel, sentence of Rigorous Imprisonment of six years cannot be said to be harsh or disproportionate. There is no reason warranting interference in the finding of guilt and conviction of A.3 and sentence of Imprisonment imposed upon him. For the reasons stated above, conviction of A.2 and A.4 is to be reversed.

41. Criminal Appeal No.717 of 1996:- Therefore, the Judgment of learned Sessions Judge in S.C.No.235 of 1996 (dated 09.09.1997) convicting Appellant / A.3 under Sec.304 (II) I.P.C. and the sentence of imprisonment are confirmed and this appeal is dismissed. The Trial Court is directed to take immediate steps for securing the Accused to commit him to prison for serving the remaining period of sentence.

42. Criminal Appeal No.693 of 1996:- Therefore, the Judgment of learned Sessions Judge in S.C.No.235 of 1996 (dated 09.09.1997) convicting Appellants / A.2 and A.3 under Sec.304 (II) r/w 34 I.P.C. is set aside. This appeal is allowed. Appellants / A.2 and A.4 are acquitted of the charge. The bail bonds shall stand cancelled.

Index:Yes
Internet:Yes

sbi

To

1. The II Additional Sessions Judge,
Trichy.

2. The Principal Sessions Judge,
Trichy.

3. The Superintendent,
Central Prison, Trichy.

4. The Inspector of Police,
Karur Police Station,
Tricy District.

5. The Public Prosecutor,
High Court, Madras.

□